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SINKING FUND AND GUARANTY AGREEMENT

AMERICAN SMELTING AND REFINING COMPANY


TO

GUARANTY TRUST COMPANY OF NEW YORK, as Trustee

AND

ROSITA COAL AND COKE COMPANY

NOVEMBER 1, 1919



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15 July 5-1 7. *Guaranty Trust Company of New York*

THIS AGREEMENT, made and entered into the 1st day of November, 1919, by and between the AMERICAN SMELTING AND REFINING COMPANY, a corporation of the State of New Jersey, of the first part (herein referred to as the "Smelting Company"), the GUARANTY TRUST COMPANY OF NEW YORK, a corporation of the State of New York, of the second part (herein referred to as the "Trustee"), and the ROSITA COAL AND COKE COMPANY, a corporation of the State of Delaware, of the third part (herein referred to as the "Company"), WITNESSETH:

WHEREAS, the Company contemporaneously herewith has executed and delivered to the Trustee a trust agreement dated November 1, 1919, pledging the capital stock therein described of the Compagnia Carbonifera de Sabinas, a corporation organized and existing under the laws of the Republic of Mexico (herein referred to as the "Sabinas Company"), to secure an issue of bonds of an aggregate principal sum of not exceeding One million three hundred and twenty-five thousand dollars (\$1,325,000), which bonds are to be known as the Company's Five-Year 6% Sinking-Fund Gold Bonds, are to be dated November 1, 1919, to mature November 1, 1924, and to bear interest at the rate of six per cent. per annum, payable semi-annually on May 1 and November 1 in each year until the principal sum is fully paid, both principal and interest being payable at the principal office of the Guaranty Trust Company of New York in the City of New York, reference to said trust agreement being hereby specifically made for the exact terms thereof; and

WHEREAS, by the provisions of the said trust agreement, the Company has agreed to make sinking-fund payments in the amount of at least Two hundred and sixty-five thousand dollars (\$265,000) per annum, payable to the Trustee in semi-annual instalments of One hundred and thirty-two thousand five hundred dollars (\$132,500) on or before the last days of April and October in each year, commencing with the last day of April, 1920, such sinking-fund moneys

to be applied by the Trustee to the purchase or redemption of bonds at a price not exceeding the principal amount thereof; and

WHEREAS, the Smelting Company is about to acquire said bonds, or substantially all thereof, from the Company in part payment of the transfer and delivery to the Company of said stock of the Sabinas Company; and

WHEREAS, the Smelting Company, in order to acquire said stock of the Sabinas Company, has agreed to sell, transfer and deliver in part payment therefor said bonds of the Company and to guarantee the due and punctual payment by the Company of the principal and interest of said bonds and of the sinking-fund payments required to be made by the Company under the terms of said trust agreement; and

WHEREAS, the Company is a subsidiary of the Smelting Company which owns all of the capital stock of the Company; and

WHEREAS, it is within the powers of the Smelting Company legally to make the covenants herein contained and to guarantee the due payment of the bonds, principal and interest; and

WHEREAS, all things necessary to make this instrument a valid binding legal obligation of the parties hereto have been done, performed and have happened;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for and in consideration of the premises and the reciprocal covenants herein contained, and the sum of One dollar to each of the parties by the other in hand paid, receipt whereof is hereby acknowledged, and of the execution of the trust agreement herein referred to and of the acceptance of the said bonds by the holders thereof, the parties hereto agree as follows:

FIRST. The Company agrees to set aside all dividends or other payments received by it upon the stock of the Sabinas Company as a special fund and duly to apply the same, all as provided in and by Section 12 of Article II of the said Trust Agreement. In case the funds in the hands of the Trustee, derived directly or through the Company from payments received by way of dividends or otherwise upon the stock of the Sabinas Company, shall be insufficient to provide payment of such principal and interest and/or sinking fund instalments for any reason whatsoever, the Company will deposit with the Trustee at least one day before the due date of any such payments, such sums as added to the amount in the Trustee's hands and available for the purpose of such payments, shall be sufficient to satisfy the same.

SECOND. The Smelting Company hereby agrees to guarantee and does hereby guarantee the due and punctual payment by the Company of the principal of and interest on each and every of said bonds as and when the same shall respectively become due and payable, whether at maturity or by declaration or otherwise, pursuant to the provisions of said bonds and coupons and of the Trust Agreement, and further guarantees the due and punctual payment by the Company of the sinking fund payments required to be made by the Company in accordance with the terms of said Trust Agreement; and hereby agrees itself punctually to make such payments for principal and interest and sinking fund if the Company shall fail to make the same when due.

THIRD. The Smelting Company covenants with the holder of each bond that the principal thereof and interest thereon, and the sinking-fund payments provided for in said Trust Agreement shall be duly and punctually paid as and when the same shall respectively become due and payable, and that it will execute upon each bond a covenant to that effect in the following words:

“For value received, the American Smelting and Refining Company hereby guarantees to the holder

hereof the due payment by Rosita Coal and Coke Company of principal, interest and sinking-fund in accordance with the terms of the within bond.

AMERICAN SMELTING AND REFINING COMPANY,

By.....”

FOURTH. Neither the guarantee hereinbefore recited nor the guarantee endorsed upon any of said bonds shall be deemed to be waived, discharged or affected by any extension which any bondholder or the Trustee under said Trust Agreement may give to the Company, or by any action or inaction of the Trustee or of the Company, or of any bondholder, or by any merger or consolidation of the Company with or without the transfer of its property to any other company, or in any other way except by the payment in full of said bonds, principal and interest; and the Smelting Company hereby waives presentation of said bonds or demand and notice of protest or of non-payment.

FIFTH. In the event of any default by the Company in the performance of its covenants and obligations under the terms of said Trust Agreement, a sale of the trust estate shall in no way affect the obligation of the Smelting Company to cause the due payments of principal and interest of said bonds to be paid, and the Smelting Company shall make good any deficiency remaining after such sale. The Trustee shall be under no obligation to resort first to the pledged stock, but may in the first instance at its option call upon the Smelting Company to make good any default of the Company.

SIXTH. The Company agrees to repay to the Smelting Company on the 1st day of January, 1925, with interest accruing meanwhile at the rate of 6% per annum, any money which, in accordance with the provisions hereof, the Smelting Company shall have paid, together with such accrued interest, and such indebtedness at the request of the Smelting Company shall be evidenced by promissory

notes or other evidences of indebtedness maturing on said date, and if the Smelting Company holding the same or entitled so to do shall so require, shall secure said promissory notes or other evidences of indebtedness by a trust agreement similar to the Trust Agreement hereinbefore referred to, but second in lien thereto, but the Company shall not have the privilege of anticipating the payment of said notes or other evidences of indebtedness by paying the whole or any part of them at any time before their maturity until the Five-Year 6% Sinking Fund Gold Bonds have been paid, principal and interest. Such notes or other evidences of indebtedness, which may be given to the Smelting Company evidencing the indebtedness incurred by the Company for advances made by the Smelting Company in accordance with the terms of this agreement, shall be subordinate to the payment of the Five-Year 6% Sinking Fund Gold Bonds.

SEVENTH. The Smelting Company further agrees that, so long as any of the Five-Year Six Per Cent. Sinking Fund Gold Bonds of the Company are outstanding, it will not sell, assign, transfer, dispose of or part with the control of, any indebtedness, obligations or liabilities, now or hereafter existing, of the Company or the Sabinas Company to it, except by extension or renewal thereof, and that the payment of all such indebtedness, obligations or liabilities shall be subject and subordinate to the payment in full of all of said bonds for principal and interest and to the making of all such sinking fund payments. Provided, however, that nothing contained in this or in the next preceding article of this agreement shall be taken or held to preclude the Smelting Company from exercising and enforcing, in any lawful manner and to any lawful extent, in the courts of Mexico or elsewhere, its rights and powers as a creditor of the Sabinas Company, if and whenever, in the judgment of the Smelting Company, concurred in by the Trustee, it shall be necessary or desirable to exercise or enforce such

rights or powers in order to protect the Sabinas Company in the beneficial ownership of its mining properties and to prevent or hinder persons claiming rights or interests in such properties adverse to the rights or interests therein of the Sabinas Company from establishing such claims; and the Smelting Company agrees, until the said bonds are fully paid, both as to principal and interest, that any rights, powers or interests which it may now have or may hereafter acquire as such creditor in respect to such properties, shall be used, held or availed of by it, so far as possible, in trust for the benefit of the bondholders under said Trust Agreement and the Company. The Trustee may accept a certified copy of a resolution of the Board of Directors or Executive Committee of the Smelting Company as to the propriety of its giving its consent.

EIGHTH. The remedies herein provided for are cumulative and in addition to any other remedies existing at law or in equity.

NINTH. Any notice or letter herein provided for may be given by mailing the same to the party to whom it is required to be sent at its last known address or at such other address as it may from time to time file with the Trustee in writing.

TENTH. The recitals of fact herein contained are made by the Company and not by the Trustee which assumes no responsibility in respect thereto. The Trustee is joined as a party to this Agreement for the purpose of securing the benefits thereof to the holders of said Five-Year 6% Sinking Fund Gold Bonds and for the further security of said Bonds. It is agreed that the provisions of said Trust Agreement and in particular the provisions of Article X thereof in respect to the rights and duties of the Trustee thereunder shall be taken to be and hereby are made a part of this Agreement in respect to the rights and duties of the Trustee hereunder.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed by their respective officers

thereunto duly authorized, and their corporate seals to be hereunto affixed and attested, in triplicate, this day and year first above written.

AMERICAN SMELTING AND REFINING COMPANY,

By KARL EILERS
Vice-President,

(Corporate Seal).

Attest:

W. E. MERRISS
Secretary.

GUARANTY TRUST COMPANY OF NEW YORK,

By M. P. CALLAWAY
Vice-President,

(Corporate Seal).

Attest:

E. P. DAVIS
Assistant Secretary.

ROSITA COAL AND COKE COMPANY,

By G. P. BARTHOLOMEW
President,

(Corporate Seal).

Attest:

W. E. MERRISS
Secretary.

STATE OF NEW YORK, }
 County of New York, }ss.:

On the 7th day of November, 1919, before me came Karl Eilers, to me known, who, being by me duly sworn, did depose and say that he resides in Sea Cliff, L. I., N. Y.; that he is a Vice-President of American Smelting and Refining Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

CHRISTOPHER J. ACER

(Seal) Notary Public, Kings County No. 122
 Certificate filed in N. Y. County. No. 107
 N. Y. Co. Registers No. 1200.

STATE OF NEW YORK, }
 County of New York, }ss.:

On the 7th day of November, 1919, before me came M. P. Callaway, to me known, who, being by me duly sworn, did depose and say that he resides in New York City, N. Y.; that he is a Vice-President of Guaranty Trust Company of New York, one of the corporations described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

ARTHUR BURKE

(Seal) Notary Public. New York County
 New York County Clerk's No. 356
 New York Register's No. 10024
 My commission expires Mar. 30, 1920

STATE OF NEW YORK, }
 County of New York, } ss.:

On the 7th day of November, 1919, before me came G. P. Bartholomew, to me known, who, being by me duly sworn, did depose and say that he resides in Essex Fells, N. J., that he is the President of Rosita Coal and Coke Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

CHRISTOPHER J. ACER

(Seal) Notary Public, Kings County No. 122
 Certificate filed in N. Y. County No. 107
 N Y Co. Registers No. 1200



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